



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company (U 338-E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 Through December 31, 2006 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resources Recovery Account and Other Regulatory Accounts; and for Recovery of \$4.863 Million Recorded in Four Memorandum Accounts.

Application No. 07-04-001

**DIVISION OF RATEPAYER ADVOCATES MOTION TO STRIKE  
PORTIONS OF SOUTHERN CALIFORNIA EDISON'S TESTIMONY**

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AND TESTIMONY**

**I. INTRODUCTION**

Pursuant to Rules 1.7, 2.6 and 11.1 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) separately submitted its Protest of Southern California Edison Company's (SCE) Application (A.) 07-04-001 filed April 2, 2006.

DRA here moves to strike portions of SCE's application relating to the Mohave Generating Station that request Commission approval of the Mohave Balancing Account (MBA).<sup>1</sup> DRA also moves to strike portions of SCE's testimony that state that: (1) the amounts recorded in the MBA for the Record Period are reasonable and consistent with

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<sup>1</sup> Specifically, DRA moves to strike the final paragraph on page 3 of SCE's Application.

Commission decisions, and (2) the capital expenditures of \$16.4 million that SCE incurred to preserve the possibility of continued or resumed operations at Mohave beyond December 31, 2005, and to maintain the plant in a manner that is safe and in compliance with all applicable regulatory requirements, are reasonable and recoverable.<sup>2</sup>

DRA does not address the merits of SCE's Mohave Generating Station testimony or requests for cost recovery. Rather, DRA believes evaluation of Mohave's two-way balancing account within ERRA is inappropriate. By including the MBA in its ERRA application, SCE attempts to modify the scope of an ERRA proceeding, which is limited to review of procurement activities. SCE's inclusion also potentially confuses the standard of review of the ERRA, which is generally considered a compliance filing. Additionally, DRA believes the MBA avoids any meaningful review in view of the fact that there is typically limited participation by intervenors in ERRA proceedings.

## **II. MOTION TO STRIKE**

### **A. SCE'S APPLICATION AND TESTIMONY REGARDING THE MOHAVE GENERATING STATION IS BEYOND THE SCOPE OF THIS PROCEEDING**

Under the direction of Public Utilities Code Section 454.5, subdivision (d)(3), the Commission established ERRA the balancing account in D.02-10-062 to track actual recorded energy procurement costs against the authorized energy procurement costs in the revenue requirement. (D.05-04-036, p. 7; D.02-10-062, p. 61.) Section 454.5(d)(3) states, in relevant part,

Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or a combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission

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<sup>2</sup> Specifically, DRA moves to strike Chapter 5 of SCE's Confidential and Public Testimony, identified as SCE-1, pages 73-118.

shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. (P.U. Code § 454.5, subd. (d)(3).)

Since the establishment of ERRA, review of ERRAs remains limited in scope to the tracking of procurement-related costs, including contract administration,<sup>3</sup> utility retained generation (URG) fuel costs, and least cost dispatch.<sup>4</sup> The issues relevant to the ERRA proceeding have been heavily disputed, including the issue of whether it is appropriate for the Commission to consider operations and management (O&M) and capital costs within the context of ERRA.<sup>5</sup> In D.02-10-062, the Commission denied the inclusion of O&M and capital costs in the ERRA process:

TURN supports the concept of a balancing account for fuel and purchased power costs and also suggests that O&M and capital costs for power produced from URG should be tracked with these for ease of comparison between costs of different resources and different ownership. We find merit in TURN's proposal, but we do not adopt it at this time. We should revisit this proposal when the Commission addresses whether the respondent utilities should build or operate new generation resources. (D.02-10-062, p. 62.)

Accordingly, in a later decision, the Commission explicitly held, "To the extent that [DRA] may take exception to the URG operations, maintenance or capital costs of PG&E, they are specifically excluded from and outside the scope of ERRA proceedings, pursuant to D.02-10-062." (D.05-11-007, p. 4.) Thus, the Commission refused to

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<sup>3</sup> Under the purview of Standard of Conduct 4 (SOC 4), "Prudent contract administration includes administration of all contracts within the terms and conditions of those contracts, to include dispatching dispatchable contracts when it is most economical to do so. In administering contracts, the utilities have the responsibility to dispose of economic long power and to purchase economic short power in a manner that minimizes ratepayer costs." (D.02-12-074, p. 54.)

<sup>4</sup> "Least cost dispatch refers to a situation in which the most cost-effective mix of total resources is used, thereby minimizing the cost of delivering electric services. The utility bears the burden of proving compliance with the standard set forth in its plan." (D.05-04-036, p. 14; D.03-06-076, pp. 46-47; D.02-12-074, p. 54.)

<sup>5</sup> In D.05-01-054, the Commission stated, "SCE's decisions to dispatch the resources under its control in the daily, hourly, and real-time markets is relevant for review in ERRA filings" and "forward purchase and sale transactions done months prior to the time of dispatch are considered procurement activities and as such, should be reviewed in the quarterly compliance Advice Letter filings." (D.05-01-054, p. 9.)

consider DRA's review of PG&E's URG operations, including planned and unplanned forced outages, to evaluate the reasonableness of PG&E actual power purchases. (*Ibid.*)

DRA objects to SCE's inclusion of the Mohave Balancing Account in the ERRA proceeding. In the instant application, SCE inappropriately requests an evaluation of its operations and management of the Mohave Generating Station, and improperly seeks to recover capital costs incurred in 2006. In D.06-05-016, the decision that approves the MBA, the Commission was clear that the recorded expenses in the two-way account expressly relate to O&M and capital costs:

...SCE has determined, and we will adopt, O&M expenses and capital related costs associated with a temporary shutdown scenario. In general, a temporary shutdown of Mohave requires that plant equipment be reliably maintained in order to enable a return to normal operations. The adopted costs relate to a temporary shutdown as envisioned by SCE, whereby return to normal operations would be once the environmental controls have been installed. We note that if Mohave shuts down and then returns to normal operations, when and the circumstances under which that return happens may be different than what is assumed in this decision. For example, SCE may be able to negotiate further operation of Mohave prior to installation of environmental controls.

Due to the many uncertainties related to this issue, SCE's request to establish a two-way balancing account is reasonable and will be adopted. SCE shall record its share of all Mohave O&M and capital related costs in the balancing account. Temporary rate recovery will be provided by the associated O&M expenses and capital-related costs adopted by this decision. (D.06-05-016, pp. 18-19.)

While the Commission adopted the MBA "as proposed by SCE,"<sup>6</sup> D.06-05-016 did not require the MBA to be reviewed in SCE's annual ERRA proceeding. DRA believes the Commission should not include review of SCE's MBA within an ERRA proceeding, as it would be inconsistent with the scope of the ERRA as established by numerous Commission decisions.

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<sup>6</sup> Paragraph 4 of the MBA states, "Reasonableness of amounts recorded in the MBA shall be determined in SCE's April 1st ERRA annual reasonableness proceedings. Any (over)/undercollection in the MBA shall be transferred to the BRRBA to be recovered from or returned to customer[s] on an annual basis."

**B. MBA IS SUBJECT TO A TRADITIONAL REASONABLENESS REVIEW AND CONFLICTS WITH THE COMPLIANCE REVIEW OF AN ERRA**

The Commission determined the Mohave Balancing Account is subject to a traditional reasonableness review.<sup>7</sup> (D.06-05-016, p. 19.) DRA believes it is inappropriate for the Commission to consider the MBA within the ERRA filing since the standard of review of an ERRA proceeding adheres to the AB 57 prohibition on after-the-fact reasonableness reviews.<sup>8</sup>

The Commission articulated that the standard of review in ERRA filings is primarily one of compliance:

There are elements of reasonableness review within [Standard of Conduct 4 (SOC 4)]. As we have previously stated, this is not a traditional reasonableness review in that only certain aspects (contract administration and least cost dispatch) are subject to review in the ERRA, while other aspects (including terms and prices) are reviewed in the quarterly procurement advice letter process. However, with regard to least cost dispatch, we have no specified prudence or reasonableness evaluative criteria. We have instead stated that the utilities must use the most cost-effective mix of total resources, thereby the cost of delivering electric services. That is a compliance matter. (D.05-04-036, pp. 22-23, citing D.05-01-054, p. 14.)

The Commission continued,

Based on analyses of SCE's showing and subsequent discovery, [DRA] or any other party may take the position that SCE did not fully comply with SOC 4. In such cases, we will judge the merits of the parties' positions and may impose disallowances and/or penalties.... This compliance process encompasses much more than that characterized by [DRA]. Imposing a compliance process for least-cost dispatch under SOC 4, rather than a reasonableness review process, does not diminish our ability to ensure just and reasonable rates." (*Id.* at 23, citing D.05-01-054, pp. 14-15.)

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<sup>7</sup> In D.6-05-016, Commission approved the Mohave Balancing Account "as proposed by SCE."

<sup>8</sup> Public Utilities Code §454.5

Based on the above, there is no doubt that Commission review of the ERRA application is limited to the compliance process enumerated under SOC 4.

In contrast, the reasonableness review the Commission contemplated for the MBA in D.06-05-016 appears much more stringent than the standard of review relied on in the ERRA. As described in D.06-05-016 which adopts the MBA, the Commission stated,

*Due to the many uncertainties related to this issue, SCE's request to establish a two-way balancing account is reasonable and will be adopted.... Temporary rate recovery will be provided by the associated O&M expenses and capital-related costs adopted by this decision. Permanent recovery of costs, which may be higher or lower than the level adopted by this decision, will be based on the results of a future reasonableness review. By application, SCE shall make an affirmative showing of reasonableness on the need for, and extent of, all costs recorded in the balancing account. (D.06-05-016, p. 19, emphasis added.)*

Further expounding on the form of this "reasonableness review," the Commission continued,

No matter what revenue requirement level is set, SCE will ultimately only receive rate recovery for those costs that the Commission determines are reasonable.

...

Fine tuning the costs and procedures would be pointless unless we knew exactly when and under what conditions Mohave would return to operation. However, again, we are not prejudging the reasonableness of any of the costs. SCE must justify its actions in responding to whatever ultimately happens, whether it is continued operation, some form of temporary shutdown, or permanent shutdown. SCE must make a full reasonableness showing on its actions as well as on all costs booked to the two-way balancing account. Only costs found by the Commission to have been reasonably incurred will be permanently recovered in rates. (D.06-05-016, pp.19-20.)

Based on the above, the Commission clearly indicates that a full-blown reasonableness review, such as in a General Rate Case, is necessary to determine the appropriateness of entries made into the MBA. The ERRA proceeding does not provide this type of review.

By incorporating the MBA into the ERRA filing, SCE potentially complicates Commission review of the key issues within ERRA. MBA issues should be kept separate and distinct from the ERRA, as MBA issues may not be subject to a full reasonableness showing. DRA believes SCE may improperly benefit by leading the Commission to overlook this more stringent standard, and use the ERRA's lesser standard of review to evaluate the MBA. Indeed, SCE's Mohave testimony is presented amidst other ERRA-related issues, in which Public Utilities Code section 454.5 prohibits after-the-fact reasonableness review.

### **C. ERRA PROCEEDINGS HAVE LIMITED PARTICIPATION**

In itself, the issues relating to ERRA are complex and require significant DRA resources. DRA's ability to meaningfully review the MBA is limited in this proceeding.<sup>9</sup> To give context to the arduous nature of the ERRA proceeding, for SCE's 2006 Record Period, to assess one aspect of least cost dispatch, DRA must review 8,760 hours worth of SCE's spot market transactions, the daily resource plans of each transaction day, the daily generation operations center logs, and real-time price surveys in order to understand the market conditions and determine whether the purchases and sales were competitively priced. In addition to the ERRA, SCE seeks review and approval of numerous additional balancing accounts in this application.

DRA believes the MBA would be more appropriately considered in the upcoming SCE GRC, to be filed this August. Given that ERRA is viewed as a compliance filing and not considered a forum to evaluate O&M and capital costs, ERRA proceedings typically has a limited audience (usually DRA is the only participant), and does not benefit from robust examination by other intervenors, such as TURN.<sup>10</sup> The issues surrounding the Mohave Generating Station are similarly complex and much of the

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<sup>9</sup> DRA's Mohave expert who presented testimony on the Mohave issue in SCE's GRC Application 04-12-014 will be available during the August GRC filing.

<sup>10</sup> In SCE's GRC Application, A.04-12-14, TURN recommended the Commission not authorize capital and O&M spending for Mohave as forecast in SCE's continued operations scenario. (D.06-05-16, p. 16.)

Commission's decision was based on the assumption of a temporary shutdown. Given the Commission's belief that there are "many uncertainties related to this issue" (D.06-05-016, p. 19), the issues that may arise in the MBA should be weighed based on its own merits, and not in the context of an ERRA. DRA also believes SCE wishes to improperly benefit from including the MBA in this complex proceeding with an arguably more lenient standard of review and because of ERRA's limited participation and DRA's scarce resources. Treatment of the MBA, and whether the costs in the balancing account are reasonable, should be afforded full participation by parties participating in the SCE GRC and the higher standard of review accorded by that proceeding.<sup>11</sup>

### **III. SCHEDULE**

DRA recommends adoption of the schedule proposed in its protest, assuming DRA's motion to strike portions of SCE's application and testimony are granted. Should DRA's motion be denied, DRA reserves the right to recommend adoption of a schedule that would accommodate the voluminous extra work required by MBA review.

DRA appreciates the opportunity to perform the review, discovery and analyses necessary to fairly evaluate this application.

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<sup>11</sup> A.04-12-014

Respectfully submitted,

/s/ Lisa Marie Salvacion

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May 8, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES AND MOTION TO STRIKE PORTIONS OF SOUTHERN CALIFORNIA EDISON’S TESTIMONY**” in **A.07-04-001** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on the 8<sup>th</sup> **day of May, 2007** at San Francisco, California.

/s/ ALBERT HILL  
Albert Hill

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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